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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

APR 21 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of

Implementation of the Cable Television

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MM Docket No. 92-260

WCA generally applauds the *R&O* as a valuable first step towards eliminating home wiring as an anti-competitive weapon in the hands of the cable industry.<sup>4</sup> However, WCA fears that the Commission inadvertently has crafted new Sections 76.801 and 76.802 in a way that cable operators can undercut the policy objectives behind the *R&O*. Therefore, WCA urges the Commission on reconsideration to amend Section 76.802 to eliminate opportunities for anti-competitive and anti-consumer abuse.

As summarized in the *R&O*, Section 16(d) was intended by Congress “to avoid the disruption of having the wiring removed and to allow subscribers to utilize the wiring with an alternative multichannel video delivery system.”<sup>5</sup> Under the rules adopted by the Commission to implement that goal, when installed cable belongs to the cable operator under traditional notions of contract and property law, the cable operator may not remove the cable when a subscriber voluntarily terminates service unless it gives the subscriber the opportunity to acquire the wiring at replacement cost and the subscriber declines. The rules further provide that if the subscriber declines to acquire the wiring,

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<sup>3</sup>(...continued)

ownership of cabling installed after the effective date of new rules would vest in the consumer upon installation. *See* Reply Comments of Wireless Cable Ass’n Int’l, MM Docket No. 92-260 (filed Dec. 14, 1992).

<sup>4</sup>While WCA is disappointed that the time constraints imposed by Congress prevented the Commission from fully addressing the issues raised in the comments, WCA is certainly heartened by the Commission’s acknowledgement that “broader cable home wiring rules could foster competition and could potentially be considered in the context of other proceedings.” *R&O*, *supra* note 1, at ¶ 6.

<sup>5</sup>*Id.* at ¶ 3.

the cable operator must remove it within thirty days or else make no subsequent attempt

to remove it or to restrict its use

that actually intends to abandon cabling can tell a terminating subscriber that it will remove the cabling and then, when the time afforded by the Commission for removal has come and gone, suffer no greater penalty than the loss of the cabling.

Why would a cable operator falsely advise a terminating subscriber that his or her home cabling will be removed if not purchased? It may actually convince some consumers to purchase cabling that the operator would have abandoned otherwise. Quite frankly, however, WCA believes this will rarely be the motivation; given that the Commission has limited the purchase price to the replacement cost of the cable, the transaction costs imposed on the cable operator to sell installed cable to a terminating subscriber will likely be close to, if not in excess of, the purchase price. In other words, the cable operator will see little, if any, positive economic benefit from selling installed cabling to terminating consumers.

What concerns WCA is that a cable operator might falsely proclaim an intention to remove wiring from the home of a terminating subscriber in order to prevent an alternative multichannel video distributor from utilizing that wiring during the thirty day period afforded the cable operator to remove the wiring. A cable operator could defeat the whole purpose of the new rules by forcing a consumer who wants to receive service from an alternative distributor to either: (i) go without service for up to thirty days until the initial cabling is abandoned; (ii) tolerate the inconvenience and visual blight of having a second cable installed; or (iii) pay for cabling that the cable operator generally abandons. Certainly, some consumers might elect to remain with their cable

operator if presented with such a Hobson's choice -- precisely the result Congress sought to avoid when it enacted Section 16(d) of the 1992 Cable Act.

There are several steps the Commission can take to assure that cable operators comport with the spirit behind Section 16(d). First, it should take a cue from the customer service standards adopted in MM Docket No. 92-263 and amend Section 76.802 to require that, absent extraordinary conditions, the removal of cabling occur within seven days of the termination request, rather than thirty days.<sup>7</sup> If cable operators can be expected to install cabling within seven days of request, it can remove that cabling within the same time frame.<sup>8</sup> By reducing the time that the cable operator can restrict a consumer from permitting an alternative multichannel provider from utilizing installed wiring, the Commission will limit both the leverage the cable operator has and the opportunities for mischief stemming from that leverage.

Second, a cable operator who claims an intent to remove cabling should be barred from terminating service until either the cable is removed or the seven day period lapses. In this way, a consumer who does not want a second cable in his or her home is not deprived of multichannel video programming while awaiting the removal of the first cable and the installation of new service. No consumer should be faced with the

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<sup>7</sup>"Customer Service Standards Set For Cable Operators Nationwide," Report No. DC-2365 (rel. Mar. 11, 1993).

<sup>8</sup>Similarly, the "appointment window" rules adopted in MM Docket No. 92-263 should apply to appointments to remove wiring. A failure to comply would result in the automatic transfer of the cabling to the homeowner.

prospect of losing cable service but still having the cable company claiming dominion over cabling installed in his or her home.

Third, the Commission should establish procedures for the filing of complaints against cable companies that evidence a pattern of the cable company claiming that cabling will be removed, but then not removing it. Standing to bring complaints should be vested not only in consumers who are adversely affected, but also in competitors. In this manner, the Commission can take appropriate action (including the imposition of forfeitures) against cable operators who act in an anti-consumer or anti-competitive manner.

*B. The Commission Should Bar A Cable Operator From Discriminating Against A Consumer Who Terminates In Favor Of An Alternative Service Provider.*

Finally, the Commission can and should bar cable operators from discriminating in their cable purchase policies against customers who terminate in order to secure service from a competitor. WCA fears that some cable operators may single out consumers who terminate service to subscribe to an alternative by requiring those consumers to purchase installed cable, while abandoning installed cable in the homes of other terminating subscribers.

With passage of the 1992 Cable Act, Congress mandated that a cable system have a uniform rate structure throughout its service area.<sup>9</sup> The legislative history of that provision makes it clear that Congress' goal was to avoid rate manipulation for

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<sup>9</sup>1992 Cable Act, § 3(d).

anticompetitive purposes. That policy is a sound one that should be applied to the policies that a cable operator employs in the sale of installed cable to terminating subscribers. Simply stated, no cable operator should be permitted to establish separate purchase policies applicable to those who terminate in order to subscribe to another distributor. Consistent with the uniform pricing mandate of the 1992 Cable Act, the Commission cannot, and should not, permit installed cabling to be given away for free to all except those who terminate in favor of a competitive offering.

### **III. CONCLUSION.**

In promulgating Section 16(d) of the 1992 Cable Act, Congress intended that the Commission “enable consumers to utilize [existing] wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause.”<sup>10</sup> The modifications to the rules promulgated in the *R&O* that WCA advocates in this petition achieve those goals in a manner that is fair to consumers and cable operators alike.

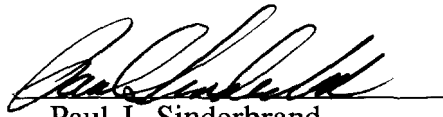
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<sup>10</sup>H.R. No. 102-628, 102d Cong., 2d Sess. House Report at 118.

WHEREFORE, for the foregoing reasons, WCA urges the Commission to amend Section 76.802 of the Rules to reflect the suggestions advanced above.

Respectfully submitted,

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